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## CHILD CARE: WILL UNCLE SAM PROVIDE A COMPREHENSIVE SOLUTION FOR AMERICAN FAMILIES?

In his first budget address to Congress, President Bush described child care<sup>1</sup> as "one of the most important issues facing the Nation."<sup>2</sup> During the 1988 election, both presidential candidates discussed child care as a campaign issue.<sup>3</sup> Since the 100th session of Congress, there have been over one hundred and seventy bills proposing solutions to the child care crisis. Many American companies have started investigating ways to assist employees in dealing with their child care needs. Child care has finally come to the forefront of the issues facing this nation.

The current debate surrounding child care is the result of new social and economic trends which have forced American families to juggle the responsibilities of work and family. Changing social and economic trends can be attributed to two phenomena. First, the feminist movement of the 1960's had a significant effect on women's roles in American society.<sup>4</sup> Public attitudes have shifted, and women have become increasingly accepted as perma-

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1. Child care in this Comment refers to "less than 24-hour care of children for the purpose of providing positive supervision while their parents work." Murray, *Child Care and the Law*, 25 SANTA CLARA L. REV. 261, 261 n.2 (1985).

2. President's Budget Address to Congress; 25 WEEKLY COMP. PRES. DOC. 177 (Feb. 13, 1989).

3. President George Bush in the 1988 Republican platform supported a toddler tax credit for pre-school children, child care programs which do not discriminate against single earner families with one parent at home, a reversal of the erosion of the dependent care tax exemption, and an amendment to the dependent care tax credit to make it available to low income families. REPUBLICAN NATIONAL COMMITTEE, AN AMERICAN VISION FOR OUR CHILDREN AND OUR FUTURE PLATFORM 21-22 (1988) (platform adopted at Republican National Convention, Aug. 16, 1988). Michael Dukakis, the Democratic Nominee for President solidly endorsed the Act for Better Child Care Services of 1988. The Democratic platform supported programs helping low and middle income families pay for child care, grants and low interest loans to providers and facilities to increase the supply of child care, and developments to improve the quality of child care. The platform also adopted the goal of establishing a National Day Care Partnership, similar to the Massachusetts Day Care Pact which has successfully encouraged public and private child care initiatives. DEMOCRATIC NATIONAL COMMITTEE, THE 1988 DEMOCRATIC NATIONAL PLATFORM 4 (1988).

4. M. FOX & S. HESSE-BIBER, WOMEN AT WORK 32 (1984). The feminist movement "heightened social consciousness by questioning the assumptions, values, and images concerning a woman's place." *Id.* See also A. STROMBERG & S. HARKESS, WORKING WOMEN: THEORIES AND FACTS IN PERSPECTIVE 41 (1988) ("society has accomplished a conditional acceptance of paid employment for women").

nent members of the work force. Second, changes occurring in the American economy have made it necessary to have two incomes to meet a family's economic needs.<sup>5</sup> As a result of both of these trends, the traditional American family has been modified, and both spouses are now full-time wage earners.<sup>6</sup> Consequently, the need for child care has increased at an unprecedented rate.

Currently, there is no comprehensive federal program or government agency specifically charged with the oversight of the development and regulation of child care. Instead, the federal government's approach to child care is uncoordinated and unfocused.<sup>7</sup> Intermittently, Congress enacts legislation on a specific government program, but the programs reflect a general lack of comprehensive public policy.<sup>8</sup> Without any federal guidance, states, in turn,

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5. The data compiled on family incomes in the last two decades substantiates this point. The average income of two-parent families with children decreased 3.1 percent between 1973 and 1984. The study found that without a second income, the drop in income would have been more than three times greater. In addition, a recent Joint Economic Committee study found that the poverty rate for two parent families was 35 percent lower as a result of mothers working. H.R. REP. NO. 985, 100th Cong., 2d Sess., pt. 1, at 3-4 (1988) [hereinafter H.R. REP. NO. 985].

6. Dodd, *Quality Child Care—Now*, Wash. Post, Aug. 29, 1988, at A15, col. 3. (Senator Dodd is a Democratic Senator from Connecticut and Chairman of the Subcommittee on Children, Families, Drugs, and Alcoholism). See also S. DORNBUSCH & M. STROBER, *FEMINISM, CHILDREN AND THE NEW FAMILIES* 161 (1988) ("[t]he rise in two earner families is one of the most striking economic and social developments of the post-World War II period.").

7. There are currently between twenty-five and thirty-eight federal programs supporting some facet of child care. U.S. DEP'T OF LABOR, *CHILD CARE: A WORKFORCE ISSUE, REPORT OF THE SECRETARY'S TASK FORCE 19-55* (1988) [hereinafter *WORKFORCE ISSUE*]. For example, the Department of Agriculture alone runs three programs: (1) Child Care Food Program, 42 U.S.C. § 1751 (1988) (program provides funding to the states for food for children in child care centers); (2) Summer Food Service Program for Children, 42 U.S.C. § 1761 (1988) (program supplies funding for meals to children who qualify for free or reduced price school lunches in summer camps); (3) Special Milk Program, 42 U.S.C. § 1771 (1988) (program contributes milk to children in nonprofit nursery or child care institutions). To show the diversity of agencies involved, even the Small Business Administration has programs involving child care. The programs relating to child care are: (1) loan programs, 15 U.S.C. § 636 (1988) (Small Business Administration (SBA) guarantees loans for providers of child care); (2) small business investment company, 15 U.S.C. § 681 (1988) (provides venture capital to small independent businesses, including child care centers); (3) management assistance, 15 U.S.C. § 633 (1988) (offers management assistance to small businesses, including child care centers). Also, the following agencies have at least one program involving child care: Departments of Commerce, Defense, Education, Health & Human Services, Housing & Urban Development, Interior, Labor, Treasury, and the General Services Administration. *WORKFORCE ISSUE*, at 2-3. The potpourri of agencies involved and the diversity of their programs exemplify the fact that there is no uniform approach or policy towards assisting families with their child care needs. In a time of deficits and budget constraints, strong argument can be made that this is an inefficient use of limited federal resources.

8. For instance, in the 100th Congress, there were three bills enacted which relate to child care: Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified

vary widely on the amount of regulation.<sup>9</sup> Within the private sector only a small number of companies actually maintain child care facilities, although many companies are starting to appreciate the advantages of assisting employees with their child care needs.<sup>10</sup>

as amended at 42 U.S.C.A. § 602 (West Supp. 1989)) (states provide child care services to Aid for Families with Dependent Children recipients who participate in education and work training), Steward B. McKinney Homeless Assistance Act, Pub. L. No. 100-77, § 303(g), 101 Stat. 482 (1987) (codified as amended at 12 U.S.C.A. § 1701(z)-6 (West Supp. 1989)) (provides assistance with child care needs of the homeless), Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 222(a), 101 Stat. 1815 (1988) (provides grants to nonprofit organizations to assist in providing child care services in lower income housing projects). See *infra* note 98 for a more detailed examination.

Although never enacted, several comprehensive child care bills have been introduced, intermittently, in the last decade. See Comprehensive Child Development Act of 1971, S. 2007, 92d Cong., 1st Sess. (1972) (returned without approval by President Nixon, 7 WEEKLY COMP. PRES. DOC. 1634-36 (Dec. 9, 1971)); Comprehensive Child and Family Services Act, S. 626, 94th Cong., 1st Sess. (1975), introduced in the House as H.R. 2966, 94th Cong., 1st Sess. (1975); Child Care Act of 1979, S. 4, 96th Cong., 1st Sess. (1979), introduced in the House as H.R. 1121, 96th Cong., 1st Sess. (1979).

9. For example, within the Metropolitan Washington area, the District of Columbia, Maryland, and Virginia all differ as to their staff ratio regulations. The District of Columbia provides the following staff ratios: (a) age two and under: ratio of four children to one adult, group size not to exceed eight, (b) age two to three: eight children to one adult, group not to exceed sixteen, (c) four year olds: ten children to one adult, group size not to exceed twenty, (d) five year olds: fifteen children to one adult, group size not to exceed twenty-five. D.C. Mun. Regs. tit. 29, § 316.1 (1987). Maryland's regulations require the following: (a) two-year-old children, ratio of six children to one staff member, group not to exceed twelve children, (b) three and four-year-old children, ratio of ten children to one staff member, group not to exceed twenty children, (c) five-year-old children, ratio of thirteen children to one staff member, group not to exceed twenty-six children. MD. REGS. CODE tit. 10, § 58 (1987). Virginia has the following regulations: (a) two years and under ratio of four children to one staff member, (b) two years to six years ratio of ten children to one staff member, (c) six years and older a ratio of twenty-five children to one staff member. VA. CODE ANN. § 63.1-196.3 (1987). See also H.R. REP. NO. 190, 101st Cong., 1st Sess. 77 (1989) ("Sixteen states do not require educational qualifications for center-based staff. Twenty-eight states require neither experience nor any form of training for family day care providers.")

A report on the status of child care in Virginia recently found that "as many as 97 percent of all child care providers in Virginia are beyond the reach of state regulations." In fact, Virginia was one of four states that did not have any regulatory jurisdiction over small child care homes. *Report Urges Virginia to End Most Exemptions to Day-Care Rules*, Wash. Post, July, 11, 1989, at B1, col. 7.

10. Of the six million employers in this country, it has been found that only 11 percent assist employees with child care. Although a small number of companies maintain child care facilities, a growing number maintain referral services. Referral is a service whereby the employer maintains information detailing child care services in the community. Employees utilize the information to locate the child care best suited to their needs. An encouraging note is that child care referral is thought of as the first logical step for a business interested in becoming involved with child care. CHILDREN'S DEFENSE FUND, CHILD CARE: THE TIME IS NOW 11 (1987) [hereinafter *TIME IS NOW*]. See also D. FRIEDMAN, CORPORATE FINANCIAL ASSISTANCE FOR CHILD CARE (Conference Board Research Bulletin No. 177, 1985) (report provides a history of employer supported child care). See also *WORKFORCE ISSUE*, *supra* note

Whereas most politicians, employers, and families consider child care an important issue, it will become even more important in the future. Demographic studies show that the fastest growing sector in the American work force consists of mothers with infants indicating that the child care demand will continue to increase into the 1990's.<sup>11</sup> Today, there is a growing consensus that the federal government should act on the issue of child care. The central question confronting policy makers has shifted from whether children should be in child care to how child care can be generally improved, and what role the federal government should play in improving child care.

Opponents of active federal involvement in child care set forth three main arguments. First, opponents believe the government should stay out of child care because increased federal involvement will impinge on a family's private choice of a child care provider.<sup>12</sup> Second, opponents argue that by support-

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7, at 125-36 (discusses the alternatives available to employers such as building a child care facility, providing financial assistance, or resource and referral). Recent studies show that employees are eager for employers to increase their assistance for employees. *National Poll Finds Support for Day Care as Employee Benefit*, Wash. Post, Sept. 3, 1987, at A17, col. 1.

11. WOMEN'S BUREAU, U.S. DEP'T OF LABOR, FACTS ON U.S. WORKING WOMEN, WOMEN AND WORKFORCE 2000, Fact Sheet No. 88-1 (Jan. 1988) [hereinafter WOMEN AND WORKFORCE 2000]. See also NATIONAL COMMISSION OF WORKING WOMEN OF WIDER OPPORTUNITIES FOR WOMEN, AN OVERVIEW OF WOMEN IN THE WORK FORCE (annual fact sheet available from NCWW, 1325 G St., N.W., Washington, D.C. 20005). A noteworthy book, WORKING WOMEN: THEORIES AND FACTS IN PERSPECTIVE provides a detailed examination of the increase of women into the work force and the reasons why the trend is expected to continue into the next century. Five trends are suggested to explain the large increase of women into the work force: (1) the increase in the demand for female labor resulting from the expansion in fields that have traditionally employed women (i.e. clerical or service jobs) coupled with a decrease in availability of traditional women workers; (2) the rise in educational attainment levels of women which in turn increase women's earning ability making it more costly to forgo earnings by staying home; (3) a more favorable public attitude for women working outside the home; (4) an increase in divorce rates forcing many women into the workforce; and (5) a lowering of the fertility rate coupled with longer life expectancy—increasing the post child rearing period for women and making balancing work and family life more possible. A. STROMBERG & S. HARKES, *supra* note 4, at 39-40. Additionally, the authors of JUGGLING JOBS AND BABIES: AMERICA'S CHILD CARE CHALLENGE present yet another indicator of continued increases in women in the work force. Research has found that women are having children at an older age. Women, who delay child bearing, tend to have fewer children which increases the chances that a mother will return to work after a child's birth. M. O'CONNELL & D. BLOOM, JUGGLING JOBS AND BABIES: AMERICA'S CHILD CARE CHALLENGE 15 (1987) [hereinafter JUGGLING JOBS AND BABIES].

The Child Care Action Campaign studies have shown that there will be a labor shortage in the next century. If child care is improved, it will help to expand the labor pool by drawing more mothers into the work force. Child Care Action Campaign, 5 Child Care Action News, 4-5 (Sept./Oct. 1988) (available from Child Care Action Campaign, 99 Hudson Street, Room 1233, New York, N.Y. 10013).

12. H.R. Doc. No. 101-26, 101st Cong., 1st Sess. 101 (1989) (supplement to President Bush's budget address entitled *Building a Better America*) [hereinafter *Building a Better America*].

ing child care the government will be contributing to the demise of the traditional American family.<sup>13</sup> Supporters of this position contend that a woman's primary role is as a wife and mother. They believe that women should continue to remain in the home, maintaining the traditional nuclear family. Opponents also feel that the promotion of child care by the government might reward the choice to work as opposed to the choice of staying home and rearing children on a full-time basis.<sup>14</sup> Finally, opponents of federal involvement in child care point to the potential complications and inequities in a federal child care program. The argument is that the states, with their varying local needs and problems, are in a better position to formulate child care policies. As opponent Congressman Thomas Tauke (R-Iowa) stated, "[w]hat works in New York or Massachusetts may be totally inappropriate in Iowa or Nebraska."<sup>15</sup>

Proponents of federal involvement in child care maintain that the federal government is already heavily involved in child care. For instance, the government currently spends more than an estimated \$6.2 billion on an assortment of programs supporting child care.<sup>16</sup> Proponents assert that most women working do so out of economic need to ensure that their family income is adequate.<sup>17</sup> Child care advocates argue that many American children are placed in child care which is inadequately licensed and lacks regulatory standards. They allege that legislation on the federal level is the

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13. Stephan & Schillmoeller, *Child Care: Selected Federal Programs*, Congressional Research Service, Library of Congress, Rep. No. 87-303, 4 (1987) [hereinafter *Child Care*]. See also A. HINDING, *FEMINISM: OPPOSING VIEWPOINTS* (1986) (collection of essays addressing women working outside the home).

14. *Child Care*, *supra* note 13, at 4-5.

15. H.R. REP. NO. 985, *supra* note 5, at 31 (dissenting views of Reps. Tauke, Petri, Gunderson, Arney, Henry, Ballenger, Coleman, Roukema, Bartlett, and Grandy on H.R. 3660).

16. Stephan, *Child Day Care*, Congressional Research Service, Library of Congress, Rep. No. 1B89011, 9 (1989). See also WORKFORCE ISSUE, *supra* note 7, at 17-55 (provides a specific breakdown of where federal dollars are spent). "Federal spending on child care and Head Start will exceed \$6.9 billion in FY [fiscal year] 1988." WORKFORCE ISSUE, *supra* note 7, at 17 (emphasis in original). A recent study found that "approximately \$16 billion is spent annually on child care in the United States by governments, parents and other private sources." National Research Council, *Expert Panel Decries Lack of Affordable, Quality Child Care*, News Release, at 2 (Mar. 14, 1990) (available from the National Research Council, 2101 Constitution Ave., N.W., Washington, D.C. 20418).

17. For example, a 1983 New York Times poll found that 71 percent of mothers who work do so for the primary reason of supporting their families. H.R. REP. NO. 985, *supra* note 5, at 3. The fact that women work to support or help support their families is substantiated further by the following statistics: 43 percent of all women over eighteen are single, widowed, separated or divorced, thus their income may be the sole support for themselves or their families. A. STROMBERG & S. HARKESS, *supra* note 4, at 45. In addition, it has been found that 13 percent of women have husbands who earn less than \$10,000 a year. Survival for the family requires the mother to work to supplement the family's yearly income. *Id.*

best way to ensure that child care licensing and regulation are improved in all fifty states.<sup>18</sup> Proponents contend that only the federal government can guarantee that child care is of the same quality in all states.

Regardless of the amount of federal involvement necessary, the need for an improved approach to child care can not be understated. Millions of parents are often left with few alternatives but to leave their children in child care which is unhealthy and unsafe. Senator Orrin Hatch (R-Utah) stated that unless child care is addressed, we will put a "developmental, intellectual, and emotional mortgage on the next generation of Americans."<sup>19</sup>

Studies have revealed that there are economic costs to an unsound child care system. For example, employers have found that the productivity of employees with young children may decline as a result of problems with child care.<sup>20</sup> Because child care is crucial to the productivity and happiness of millions of American families, these families face a crisis which, if not properly addressed, could have a profound effect on American workers of the twenty-first century.<sup>21</sup>

This Comment will trace the history of child care from its beginnings in the early twentieth century to the current congressional and executive child care initiatives. It will then present the congressional and executive proposals for improving child care, and evaluate whether the differing approaches contain the necessary ingredients to improve the child care policy in this country. Finally, the Comment will present child care goals for the next decade to ensure that American families are able to attain what they need and have a right to secure: available, affordable, and high quality child care.

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18. *Child Care*, *supra* note 13, at 4.

19. Wash. Post, Feb. 28, 1989, (Health) at D10, col. 1.

20. H.R. REP. NO. 985, *supra* note 5, at 8. The Committee on Education and Labor found during hearings that investment in child care is cost effective because of the economic consequences to an unsound child care system. For example, child care discontent was the most common reason for absenteeism and poor productivity in the workplace for parents with children under six. A second study of five thousand parents surveyed from five midwestern corporations found that 58 percent of the women and 33 percent of the men with young children "felt that child care concerns affected their time at work in unproductive ways." *Id.* See STAFF OF SELECT COMM. ON CHILDREN, YOUTH AND FAMILIES, 100TH CONG., 2D SESS., CHILDREN AND FAMILIES: KEY TRENDS IN THE 1980's 4 (Comm. Print 1988). Additionally, one interesting report notes that employer interest in child care derives from the fact that "corporations expect to solve some of their employees' family problems while furthering management's concerns for a dependable work force." D. FRIEDMAN, CORPORATE FINANCIAL ASSISTANCE FOR CHILD CARE, 5 (Conference Board Research Bulletin No. 177, 1985).

21. During the debate on the ABC bill, Senator Joseph Biden (D-Del) stated that "children who receive poor child care or are left completely unattended today will be the leaders of tomorrow's citizens, the producers in tomorrow's economy, the guardians of tomorrow's democracy, and the providers for tomorrow's retirees." 135 CONG. REC. S7466 (daily ed. June 23, 1989).

# I. DEMOGRAPHICS: A REPORT ON THE STATUS OF WORKING WOMEN AND CHILD CARE IN THIS COUNTRY

A noted economist, Eli Ginzberg, recently stated that "the single most outstanding phenomenon of the twentieth century"<sup>22</sup> has been women's movement into the labor force. Since the end of World War II, the number of women entering the work force has steadily increased. Specifically, since 1966, the number of women in the work force has nearly doubled.<sup>23</sup> The extent of the change in American families is illustrated by the statistic that only ten percent of American families have a mother who is a full-time homemaker and, a father who is the sole provider.<sup>24</sup> Furthermore, since 1980, married women with preschool children have had the largest increase in work force participation of any group.<sup>25</sup> In 1988, sixty percent of all children had mothers in the work force,<sup>26</sup> nine million of whom were children under the age of six.<sup>27</sup> These trends are expected to continue. A recent illustration is a Senate report which noted that of the fifty-six percent of women in the work force, eighty percent are in their prime child bearing years.<sup>28</sup>

A significant demographic change in the composition of American families is the growth in single parent families. Single parent families, who have a median income of \$14,620 a year, are especially in need of child care and could greatly improve their families' economic independence with changes in the child care system.<sup>29</sup>

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22. F. MAYNARD, *THE CHILD CARE CRISIS* 5 (1985). See also H.R. REP. NO. 985, *supra* note 5, at 3 (the House Report reiterates that "one of the most striking [changes to society] has been the increase in the number of women participating in the work force").

23. H.R. REP. NO. 985, *supra* note 5, at 3.

24. Dodd, *Quality Child Care—Now*, Wash. Post, Aug. 29, 1988, at A15, col. 3.

25. NATIONAL COMMISSION ON WORKING WOMEN OF WIDER OPPORTUNITIES FOR WOMEN, *WOMEN, WORK AND CHILD CARE* 1 (1989) (available from NCWW, 1325 G St., N.W., Washington, D.C. 20005).

26. *Id.* See also H.R. REP. NO. 985, *supra* note 5, at 3 (provides demographics of women in the workforce).

27. WOMEN'S BUREAU, U.S. DEP'T OF LABOR, FACT SHEET NO. 86-2, *FACTS ON U.S. WORKING WOMEN, WOMEN WHO MAINTAIN FAMILIES* (1986) [hereinafter *WOMEN'S BUREAU, WOMEN WHO MAINTAIN FAMILIES*]. See also BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *MARITAL & FAMILY CHARACTERISTICS OF THE LABOR FORCE FROM THE MARCH 1988 CURRENT POPULATION SURVEY* 26, 30 (1988) (current labor force participation of women with children under six organized by age of mother and marital status).

28. S. REP. NO. 17, 101st Cong., 1st Sess. 27 (1989).

29. WOMEN'S BUREAU, *WOMEN WHO MAINTAIN FAMILIES*, *supra* note 27 (over 6.4 million women head families). The increase in single headed families can be attributed to three trends: (1) rise in the divorce rate; (2) increase in the separation rate; and (3) rise in "out-of-wedlock" births. Research has shown that single headed families have several disturbing characteristics. For example, the Women's Bureau has found that single headed families have more dependent children, lower educational attainment and lower earnings in comparison to



There is a lack of comprehensive data on the various types of child care facilities and exactly how many children spend time in these facilities.<sup>30</sup> What can be deduced from a simple comparison of supply and demand is that the number of regulated child care facilities is much smaller than the number of children with working parents. For instance, studies by The Children's Defense Fund (The Fund) found an inadequate number of spaces in many cities where enormous waiting lists exemplify the large demand.<sup>31</sup>

Information on providers of child care has shown that churches play an enormous role. In fact, churches are currently the largest private child care providers in this country.<sup>32</sup> In the business sector, there is a limited amount of involvement in child care. Of the six million employers in this country,

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other labor force groups. *Id.* Access to quality child care could help parents who are the sole providers for their families complete school and start to move their families' future in a more stable direction. *Id.* The extent of the financial burden of child care on a single parent is exemplified by comparing the median income of single female headed households and two wage earning couples: single headed families median income in 1987 was \$14,620 versus two wage earners median income for the same year which was \$40,422. Stephan, *supra* note 16, at 8.

30. The Senate Committee on Education and Labor estimates that the number of child care centers has more than doubled over the last ten years from 18,307 in 1976 to about 40,000 centers in 1986. More specifically, The National Association for the Education of Young Children has estimated that approximately 105,400 licensed day care centers existed in 1986 compared to 73,750 centers in 1977. H.R. REP. NO. 985, *supra* note 5, at 26-27. Since most states do not have stringent licensing standards, many states lack exact figures for the number of families using in-home care. Also, many states permit smaller family day care providers to remain outside the perimeter of state supervision which compounds the lack of information.

Child care in this country is provided through three predominant types of facilities: (1) family day care, (2) center care, and (3) in-home care. The location of this care ranges from churches and synagogues, for-profit centers, neighbors, and relatives. Murray, *supra* note 1, at 280-88 (provides an expansive description of the different types of care). For a recent overview of child care in this country, see C. HAYES, J. PALMER & M. ZASLOW, WHO CARES FOR AMERICA'S CHILDREN (1990) (available from the National Research Council, 2101 Constitution Ave., Washington, D.C., 20418). The book is the culmination of a two-year study which collected and assesses the status of child care in this country. Interestingly, the study was partially funded by the U.S. Dep't of Health and Human Services.

31. See A. STROMBERG & S. HARKESS, *supra* note 4, at 158. For example, 7.6 million families are currently in need of child care for the estimated 8.9 million preschool age children. The insufficiency can then be deduced by examining the enormous waiting lists around the country. See TIME IS NOW, *supra* note 10, at 1. The Children's Defense Fund found that Seattle, Washington, which it believes to be representative of many American cities, has licensed child care facility spaces for only 8,880 of the 23,000 children who are in need of care. TIME IS NOW, *supra* note 10, at 1. The Fund also found in Des Moines, Iowa that facilities are available for only 12,076 children while there are 47,000 in need of child care. *Id.* Further evidence of shortages in child care was found by the House Committee on Education and Labor. For example, testimony before the Committee revealed large waiting lists in many states for low income families: Florida - 28,000 children on the waiting list, Louisiana - 9,925 children on the waiting list, and Kentucky - 2,230 children on the waiting list. H.R. REP. NO. 985, *supra* note 5, at 6.

32. TIME IS NOW, *supra* note 10, at 11.

only 3,000 offer any kind of employee benefit which includes child care.<sup>33</sup> Often, the benefit consists solely of a referral service for employees.

Child care is an enormous financial burden. In fact, child care has been found to rank as a family's fourth largest expense after housing, food, and taxes.<sup>34</sup> The average cost for child care in this country ranges from \$3,000 to \$5,000<sup>35</sup> a year per child.<sup>36</sup> The financial burden is difficult for many

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33. *Id.* Employer provided assistance has been growing in the last decade. Employers are realizing in their recruitment of workers that child care assistance helps to attract and keep employees. The U.S. Department of Labor found employer child care assistance ran the spectrum: employer provided centers either on-site or nearby, subsidized child care in the community through vouchers or salary reduction, resource and referral, and finally flexible work schedules and parental leave policies which aid parents in balancing work and family life. *WORKFORCE ISSUE*, *supra* note 7, at 125. See also *AT&T Pact in Vanguard On Family - Care Benefits*, Wash. Post, May 29, 1989, at A1, col. 1. (AT&T entered into an unprecedented contract with its employees where it agreed to provide five million dollars to a Family Care Development Fund which would provide seed money for the creation of community based child and elder care facilities); *National Poll Finds Support for Day Care as Employee Benefit*, Wash. Post, Sept. 3, 1989, at A17, col. 1. (poll found that "a majority of Americans believe that employers have an obligation to provide child care services for their workers, and an equal number want such care near the workplace.").

A pamphlet by the Women's Bureau of the Dep't of Labor was an effort by the government to provide information for employers on providing child care services in the workplace and the various steps necessary to satisfy state and federal licensing requirements. WOMEN'S BUREAU, U.S. DEP'T OF LABOR, *EMPLOYER AND CHILD CARE: ESTABLISHING SERVICES THROUGH THE WORKPLACE* (1982). Moreover, the Congressional Caucus for Women's Issues has created a child care challenge which seeks to illuminate the innovative steps taken by the business community in helping to assist employees with child care. The Caucus provides interested employers with information on successful approaches towards addressing child care. Information is available by writing to: The Congressional Caucus for Women's Issues, Congress of the United States, Washington, D.C. 20515.

34. NATIONAL COMMISSION OF WORKING WOMEN OF WIDER OPPORTUNITIES FOR WOMEN, *supra* note 25, at 4. The average working family spends about ten percent of their yearly income on child care. *Id.* On the national level, it has been found that families spend \$11.5 billion on child care each year. STAFF OF SELECT COMM. ON CHILDREN, YOUTH AND FAMILIES, 100TH CONG., 2D SESS., *CHILDREN AND FAMILIES: KEY TRENDS IN THE 1980's 2* (Comm. Print 1989).

35. TIME IS NOW, *supra* note 10, at 5. Additionally, a House Committee report points out that child care in major cities and for children who are handicapped is more expensive. The report also discusses what low income families must do to survive. A witness at the hearing, a representative of the Illinois Department of Children and Family Services, testified of a recent situation where a single caregiver had 47 children (half of the children were under two) in a basement. The parents, when questioned, responded that they had no choice since the \$25 a week charged by this caregiver permitted them to work. They could not afford the average cost in the community of \$75 a week. H.R. REP. NO. 985, *supra* note 5, at 4-5.

36. H.R. REP. NO. 985, *supra* note 5, at 4. Several factors are involved in determining an individual child's child care costs: (1) the age of the child is an important determinant in cost since infants up to three years of age are generally more expensive than three to five year olds; (2) the type of child care arrangement since cost varies between family care, center care, and in-home care; (3) family income since lower income families may have subsidized child care; and (4) geographic location because many major cities have higher child care costs. *Id.*

middle income families and particularly difficult for low-income families. For example, a family of four with two children earning poverty level wages must spend more than half of its income on child care.<sup>37</sup>

The demographics illustrate that child care will continue to be an important issue into the next century. It is also evident that the child care industry has not responded to the large demand. However, American families are not without some government assistance. In fact, the government has played a varying role in child care throughout this century.

## II. A SURVEY OF THE FEDERAL GOVERNMENT'S INVOLVEMENT IN CHILD CARE

### A. *The Initial Stage*

The child welfare movement<sup>38</sup> of the early twentieth century was instrumental in propelling the federal government into child care. With the primary goal of protecting children, the United States Children's Bureau (the Bureau) was established in 1912. The Bureau helped to develop the first day care centers which permitted poor women to work while enabling them to retain custody of their children.<sup>39</sup> With the assistance of the Bureau, many states in the 1920's developed standards of care for agencies and organizations.<sup>40</sup>

The Depression brought expansion in services for children as the federal

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37. *Id.* This figure is based on two parents earning the minimum wage annually with a gross annual income of \$12,000. The burden on poor families is exemplified by a recent Census Bureau study which found that women in poverty pay a disproportionate 22 percent of their family income on child care while families with monthly incomes over \$3,750 paid only four percent of their income on child care. The study found that families below the poverty line paid \$32 a week for child care. In contrast, the wealthiest families paid only \$58 a week for child care. BUREAU OF THE CENSUS, U.S. DEP'T OF COMM., COMMERCE NEWS, NO. CB89-119 (July 27, 1989). See also *U.S. Census Finds Child-Care Bills Hit Poor Women Hardest*, Wash. Post, July 27, 1989, at A1, col. 1.

38. Grubb, *Day Care Regulation: Legal Policy Issues*, 25 SANTA CLARA L. REV. 303, 308 (1985) [hereinafter *Day Care Regulation*]. Grubb sets forth two converging public policies which led to the child welfare movement. First, public opinion pressured the government to increase involvement in helping the American family. Second, there was a movement calling for expanded government responsibility for children through government supported institutions. *Id.*

39. *Id.* at 309. The Bureau also worked to develop child care licensing programs which required standards of care. See also W. GRUBB & M. LAZERSON, *BROKEN PROMISES: HOW AMERICANS FAIL THEIR CHILDREN* 223 (1982).

40. *Day Care Regulation*, *supra* note 38, at 309. But, Ms. Grubb points out that these standards were thought of as goals rather than legal standards to adhere to. But, the regulations symbolize an effort on both the federal and state level to insure children were in safe and healthy environments. *Id.*

government used various New Deal programs to combat the Depression.<sup>41</sup> The first large infusion of federal money for child care came at the beginning of World War II. The American economy needed women to work outside the home, and as a result Congress passed the Lanham Act<sup>42</sup> which sought to encourage women to leave their homes and work in wartime industry. The Lanham Act provided women working in wartime production industries with federal matching funds for child care. The Act, merely a wartime appropriation, was discontinued at the war's end.

In the decades after the war,<sup>43</sup> Congress was inactive on the subject of child care. The Department of Health, Education and Welfare (HEW) however did attempt to establish a set of standards applicable to all federal agencies which received money for child care services.<sup>44</sup> In 1968, HEW formulated the Federal Interagency Day Care Requirements (FIDCR).<sup>45</sup> The requirements sought to provide a uniform standard of quality in such areas as health and nutrition, safety, and group size limitations. The FIDCR, however, were never fully adopted. The rules were inadequately drafted and lacked the necessary mechanisms to insure adequate enforcement.<sup>46</sup> As a result of the confusion surrounding FIDCR, the standards

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41. For example, the Works Product Administration employed unemployed teachers and subsidized nursery schools. But, the employment was discontinued as soon as the Depression ended. W. GRUBB & M. LAZERSON, *supra* note 39, at 212. In addition, the Security Act of 1935 provided child welfare services which were funded through the states. Social Security Act of 1935, Pub. L. No. 74-271, tit. IV & V, 49 Stat. 627 (1935).

42. Pub. L. No. 77-137, tit. II, § 201, 55 Stat. 361 (1941). The Congressional testimony at the time stated that the funds were allotted for the "purpose of providing funds for child care necessary to assure the availability of women for employment, where essential to the prosecution of the war." *War-Time Care and Protection of Children of Employed Mothers, Before the Comm. on Education and Labor*, 78th Cong., 1st Sess. 1 (1943). The funding was to expire "six months after the date of termination of the present war as proclaimed by the President." *Id.* The services under the wartime appropriation included nursery, before and after school, and health care for children. *Id.* at 2.

43. It is significant to note the post-WWII period commenced the movement which is projected to continue into the next century. Women steadily, in increasing numbers, began to enter the work force. M. FOX & S. HESSE-BIBER, *supra* note 4, at 39.

44. *Day Care Regulation*, *supra* note 38, at 314-16. The Department of Health, Education and Welfare (HEW) established a set of standards as a result of the diversity in regulations within the federal government. For example, an HEW report found that a number of agencies (the Departments of Agriculture, Defense, Housing and Urban Development, Labor, and Bureau of Indian Affairs) had differing regulations. As a result, HEW promulgated a set of regulations applying to all agencies receiving funds under the Social Security Act. U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, REPORT OF FINDINGS AND RECOMMENDATIONS 135 (1978).

45. Social Services Amendments of 1974, Pub. L. No. 93-647, § 3(f), 88 Stat. 2337, 2349 (1974).

46. The central weakness of the FIDCR was the fact that the rules were merely goals and not enforceable regulations. As a result, there was no enforcement mechanism against the

were repealed by Congress.<sup>47</sup>

The 1970's produced one significant congressional attempt at improving child care. Congress sought to fulfill the "Great Society" promise of publicly supported child care for all parents. The Comprehensive Preschool Education and Child Day Care Act<sup>48</sup> sought to create, among other things, a federal child care system. President Nixon vetoed the child care initiative, stating it would promote communal approaches to child rearing.<sup>49</sup>

In 1983, Congress responded to the substantial changes in the American family, and began to take specific steps towards addressing the changing needs of children and families. The Select Committee on Children, Youth and Families<sup>50</sup> was created with the goal of "provid[ing] an ongoing assessment of the condition of American children and families and to recommend to Congress and the public ways to improve public and private sector policies for this constituency."<sup>51</sup>

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agencies. In addition, HEW failed to involve any experienced child care personnel in formulating the policy. *Day-Care Regulation*, *supra* note 38, at 317. There was never uniform adoption of the FIDCR, for example the Defense Department and the Head Start program developed their own standards. *Id.*

47. In 1982, Congress eliminated the statutory basis for the FIDCR, and as a result after an unsuccessful history, HHS finally repealed the FIDCR. 47 Fed. Reg. 7,668 (1982). A recent study noted that "with the elimination of the Federal Interagency Day Care Requirements in 1982, the states became the sole authority for establishing quality and safety standards or regulations and enforcing them." National Research Council, *Expert Panel Declines Lack of Affordable, Quality Child Care*, News Release (Mar. 14, 1990) (available from the National Research Council, 2101 Constitution Ave, N.W., Washington, D.C. 20418).

48. S. 2007, 92d Cong., 1st Sess. (returned without approval by President Nixon, 7 WEEKLY COMP. PRES. DOC. 1634-36 (Dec. 9, 1971)). The stated purpose of the bill was to "provide every child a full and fair opportunity to reach his full potential." *Id.* at 1634.

49. President Nixon in his veto message stated that "this [Comprehensive Child Development Act of 1971] goes far beyond what this administration envisioned when it made a national commitment to providing all children an opportunity for a healthful and stimulating development during the first five years of life." *Id.* at 1635. Nixon also noted the Act had "family weakening implications." *Id.*

50. H. Res. 16, 98th Cong., 1st Sess., 129 CONG. REC. 250-64 (1983). Selected comments from the debate surrounding the creation of the Select Committee include: "the needs of families, and of youth and children are changing. There are many more single parents and more two income households." *Id.* at 252 (statement of Representative McKernan (D-Me)); "the economy, too, has taken its toll on our young . . . there are no longer resources for community centers and child care centers. Doors have closed." *Id.* at 256 (statement of Representative Mikulski (D-Md)); "the children of this country are our most precious resource. They are our leaders of tomorrow." *Id.* at 258 (statement of Representative Oaker (D-Ohio)).

51. HOUSE SELECT COMM. ON CHILDREN, YOUTH, & FAMILIES, *FAMILIES AND CHILD CARE: IMPROVING THE OPTIONS*, H.R. REP. NO. 1180, 98th Cong., 2d Sess. 12 (1984). The hearing was the first in a series discussing the social and economic trends which have raised new challenges for American families.

*B. The Federal Government's Current Involvement  
in the Child Care Arena*

Child care in America, unlike child care in most other western industrialized nations,<sup>52</sup> is a piecemeal approach by various government agencies.<sup>53</sup> Currently, the bulk of child care assistance in America is provided by five major programs: The Child and Dependent Care Tax Credit of the Internal Revenue Code;<sup>54</sup> Title XX of the Social Security Act;<sup>55</sup> The Head Start Program;<sup>56</sup> The Child Care Food Program;<sup>57</sup> and Aid For Families with Dependent Children (AFDC) Child Care Disregard.<sup>58</sup> While these programs can be seen as beneficial programs in assisting with child care, these programs lack a unified approach toward helping American families find adequate care for their children. A brief overview of the programs follows.

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52. *Children of the World*, TIME, June 22, 1987, at 60. The article briefly describes the child care systems in France, Scandinavia, Israel, Japan, and the Soviet Union. The article demonstrates how the United States lags behind all of these countries. One commentator notes "in so many areas of social policy, the United States is an exception, when it comes to day care: hopelessly 'behind' in the eyes of reformers." Wolfe, *The Day Care Dilemma: A Scandinavian Perspective*, 95 PUB. INTEREST 14 (1989). The Scandinavian countries have an unequaled commitment to child care. This author evaluates the Scandinavian policy and comments on the "lessons" the United States can learn from the government's experience in Scandinavia. *Id.* at 14-15.

53. For example, the Internal Revenue Service is responsible for tax credits which comprise the largest federal program. The Department of Labor works to compile information on women's workforce participation and workforce trends. The Department of Health and Human Services provides social services money to the states, a portion of which is spent on child care under Title XX of the Social Security Act. The Department of Agriculture's involvement consists of administering the Child Care Food Program which supplements child care center meals. See WORKFORCE ISSUE, *supra* note 7, at 19-55.

54. I.R.C. § 21 (West Supp. 1989). For a detailed history of the tax credit, see Note, *Income Tax Treatment of Child and Dependent Care Costs: The 1981 Amendments*, 60 TEX. L. REV. 321, 323 (1982). The author comments that "the credit . . . is the most effective method of making child care costs affordable for low to middle income taxpayers." *Id.* at 351.

55. 42 U.S.C. § 1397 (1983). Under Title XX of the Social Security Act, section 1397(a) sets forth the goals of the title in pertinent part "(2)(a) services . . . are directed at the goals set forth in 1397 of this title include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care." *Id.*

56. 42 U.S.C. § 9831 (1983). Head Start is a program administered through the Administration for Children, Youth, and Families within the Department of Health and Human Services which distributes funding to eligible Head Start agencies within the state.

57. 42 U.S.C.A. § 1766 (West Supp. 1989). The United States Department of Agriculture administers this program which distributes money to state agencies who in turn distribute to local child care centers. The regulations governing the Child Care Food Program are located in 7 C.F.R. § 226 *et seq.* (1989).

58. 42 U.S.C. § 602(a)(8)(A)(iii) (West Supp. 1989) (each state administers its own individual program).

### 1. The Child and Dependent Care Tax Credit

The largest federal effort to help families pay for child care is the Dependent Care Tax Credit (the credit). Enacted in 1976, the Dependent Care Tax Credit is a credit to taxpayers with employment related expenses for the care of a child, or for the care of a spouse or other dependent who is physically or mentally incapable of self-care.<sup>59</sup> The credit permits the taxpayer to set off a percentage of expenses against his/her federal income tax liability. The amount of the credit that may be claimed is determined by the amount of the taxpayer's expenses and the taxpayer's adjusted gross income.

In order to receive the credit, the taxpayer must meet several criteria. To be eligible, the taxpayer must maintain a household for a child under thirteen<sup>60</sup> and incur expenses which are employment related.<sup>61</sup> The taxpayer, depending on his/her adjusted gross income, is permitted to deduct between twenty and thirty percent of their child care expenses.<sup>62</sup> There is a ceiling on the credit of \$2,400 for one child and \$4,800 for two children.<sup>63</sup>

The credit is an enormously popular provision with an estimated 8.4 million families using the credit and providing over \$3.1 billion in tax relief.<sup>64</sup> Responding to the tax credit's popularity, Congress has proposed a flurry of amendments. For example, in 1985 alone, there were over ten proposed amendments in Congress which sought to expand the credit.<sup>65</sup> The majority

59. I.R.C. § 21(b)(1)(A)-(C) (West Supp. 1989).

60. *Id.* at § 21(a)(1) ("an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)). Subsection (b)(1)(A) states a qualifying individual is "a dependent of the taxpayer who is under the age of 13.") *Id.*

61. *Id.* at § 21(b)(2)(A) (West Supp. 1989). The code considers employment related expenses to include "expenses incurred to enable the taxpayer to be gainfully employed" while supporting a qualified individual. *Id.*

62. *Id.* at § 21(a)(2) (West Supp. 1989). The amount of the credit a family receives is dependent upon the family's adjusted gross income. For a family with an income of \$10,000 or less, the credit is 30 percent of the qualified expenses or up to \$720 for one child and \$1,440 for two or more children. *Id.* The amount of the credit decreases one percentage point for each additional \$2,000 earned over \$10,000 to \$28,000. *Id.* Families with incomes above \$28,000 or more are permitted a credit of twenty percent of allowable expenses or up to \$480 for one child and \$960 for two or more. *Id.* See also Roberts & Clarke, *Child Care and Low Income Families*, CLEARINGHOUSE REV. 233, 235 (July 1988) (article provides examples of how the credit works).

63. I.R.C. § 21(c)(1), (2) (West Supp. 1989).

64. S. REP. NO. 17, 101st Cong., 1st Sess. 26 (1989). The 8.4 million includes both child and adult dependents. Forman, *Beyond President Bush's Child Tax Credit Proposal: Towards a Comprehensive System of Tax Credits to Help Low Income Families with Children*, 38 EMORY L.J. 661, 700 (1989) (provides a chart of the number of tax returns claiming the Child and Dependent Care Tax Credit, amount of credit claimed by size and adjusted gross income in 1985). *Id.*

65. Mineta, *Federal Child-Care Income Tax Provisions: Legislative Initiatives In The*

of these amendments sought further aid for families with adjusted gross incomes under \$10,000.<sup>66</sup> Recent legislation on the credit includes proposals to make the credit refundable, and to revise the credit to exclude higher income families, enabling low and middle income families to receive the bulk of the credit.<sup>67</sup>

The tax credit is a very successful, large-scale approach to helping families defray some of the expenses associated with child care. One of the credit's attributes is that it does not involve federal grants and therefore there is no limit on the number of families who can take advantage of it. This advantage could be significant in the deficit reduction years ahead, since tax credits do not have to go through the annual appropriation labyrinth. Another asset of the tax credit is the flexibility it allows parents. Parents are able to choose who the caregiver will be and the particular type of care most suited to their children's needs.

Yet despite the tax credit's attributes, there are several disadvantages. The credit's greatest weakness is that it does nothing to expand the amount of child care or improve the quality of care. A tax credit places no quality standards on providers. Furthermore, a tax credit places no incentives or regulations on child care providers to increase the supply.<sup>68</sup>

Unfortunately, many low-income families who incur no tax liability derive no benefit from the tax credit. First, the credit does not help with the cost of child care as it is incurred. Rather, it is a credit after the money has been expended. This is burdensome on low-income families because up front cash expenditures are difficult on a limited income.<sup>69</sup> Second, a further drawback for low-income families is the credit is not refundable. Thus, a low-income family, who does not earn enough to owe taxes, will not receive the credit

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*Ninety-Ninth Congress*, 25 SANTA CLARA L. REV. 395 (1985) (an in depth examination of the tax initiatives proposed in the 99th Congress).

66. *Id.* at 398-408.

67. H.R. 1720, 100th Cong., 1st Sess., 133 CONG. REC. 1501 (daily ed. Mar. 19, 1987). One commentator points out the need for reform of the credit since "nearly half [of the credit] went to families with incomes above the median: less than 1% went to families with adjusted gross incomes below \$10,000, and only 13% to families with adjusted gross incomes below \$15,000." Besharov, *Fixing the Child Care Credit: Hidden Policies Lead to Regressive Policies*, 26 HARV. J. ON LEGIS. 505, 509-10 (1989) (footnote omitted) [hereinafter Besharov]. Besharov argues that there should be a ceiling on the tax credit so that families with less need (incomes greater than \$50,000 a year) are precluded from using the credit while lower income families may take advantage of the credit. *Id.* at 512-14. See also Forman, *supra* note 64 (offers suggestions on how to amend the credit to enable it to reach even more low income families).

68. Roberts & Clarke, *supra* note 62, at 235.

69. *Id.* at 236. The reason that most low-income families are unable to take advantage of the credit is that most low-income families do not have enough income to claim any credits. In addition, the credit is not refundable which makes it difficult for low-income families to receive any of its benefits. See Forman, *supra* note 64, at 678.



since it cannot be allocated by a refund.<sup>70</sup> As one commentator stated, "if a family lives near or at the poverty line, a tax break is no break at all."<sup>71</sup> The credit is only applicable for two children per family. Again, low-income families may be left without an option since paying the full child care cost for a third child may negate the benefit of the second parent working. Finally, the allowance of \$2,400 is considerably below the average cost of child care. Research has found that child care costs between \$3,000 and \$5,000 a year per child.<sup>72</sup>

The Child and Dependent Care Tax Credit is just one piece in the federal child care puzzle. Clearly, the credit is most advantageous to families with incomes above \$10,000 with two children. Yet, the credit fails to help those most in need. Families with low-incomes and more than two children do not receive the potential benefits the credit could confer on larger families.

## 2. Title XX of the Social Security Act

Title XX of the Social Security Act of 1976 (Title XX) provides money to the states for social services for low and moderate income persons. The states in turn appropriate the funds to areas of the state in need, including child care.<sup>73</sup> Title XX was a victim of the rampant social services cuts in the early 1980's. The 1981 cuts, for example, also modified Title XX by abolishing the requirement that states spend at least a portion of the grant received on child care.<sup>74</sup> As a result of these cuts and modifications, Title XX's role in child care has been drastically curtailed. For example, twenty-eight states spent less in 1987 for child care than was spent in 1981.<sup>75</sup> Only eighteen

70. Roberts & Clarke, *supra* note 62, at 235.

71. *Id.* at 236. The non-refundability of the tax credit has been a substantial complaint of the tax credit since it excludes a portion of the public who is the most in need, families with the lowest incomes. See Forman, *supra* note 64, at 678.

72. TIME IS NOW, *supra* note 10, at 4. Given that the average cost of child care ranges between \$3,000 and \$5,000, low-income families, even if they are able to utilize the tax credit, must still pay an additional \$600 to \$2,600 a year for child care.

73. 42 U.S.C. § 1397(a) (1983). For example, Title XX funds may be designated for the following services: child care, protective services, foster care, transportation services, family planning, training and related services, employment services, counseling services, and health support services. *Id.* at § 1397a(2)(A).

74. Pub. L. No. 93-647, § 3(f), 88 Stat. 2349 (1975) (required Title XX funding to be spent on child care services) repealed by Pub. L. No. 97-35, tit. XXIII, § 2353(s), 97 Stat. 874 (1981) (requirement of spending on child care services eliminated) (codified at 42 U.S.C. § 1397a).

75. CHILDREN'S DEFENSE FUND, STATE CHILD CARE FACT BOOK 1987 4 (1987) [hereinafter STATE CHILD CARE FACT BOOK]. The states who served fewer children in 1987 than 1981: Alabama, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio,

states are serving more children in 1988 than in 1981.<sup>76</sup> In fact, the fiscal year 1987 appropriation for Title XX is only fifty percent of the fiscal year 1977 appropriation.<sup>77</sup>

The inadequacy of Title XX program in providing child care can be attributed to cuts in federal funding and inflation which have made it difficult for the states to maintain, much less expand, child care under the Title XX. Commendably, Congress amended Title XX spending in the Omnibus Budget Reconciliation Act of 1987 (Omnibus Act)<sup>78</sup> and authorized an additional \$50 million for the program.<sup>79</sup> With these additional funds, Congress is working to expand the program from the current level of assisting a meager fourteen percent of the 3.4 million children younger than six living in poverty.<sup>80</sup>

### 3. Other Government Programs

On a smaller scale, the federal government has several programs which aid children who are already enrolled in child care. Head Start, created in 1965, is a program which helps to provide nutrition, learning, and health services to low-income children.<sup>81</sup> The program works through grants awarded by the Department of Health and Human Services to public agen-

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Oklahoma, Rhode Island, South Dakota, Tennessee, Virginia, and West Virginia. For exact expenditures for Title XX spending in 1981 and 1987, see *id.* at 81-82.

76. *Id.* at 8. States who served more children in 1987 than 1981: Alaska, Connecticut, District of Columbia, Florida, Idaho, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, and Washington. For complete list actual expenditures, see *id.* at 14, 81-94.

77. *Id.* at 4.

78. Pub. L. No. 100-203, tit. IX, § 9134(c)(4), 101 Stat. 1330-315 (1987).

79. *Id.* (increased spending for Social Services Block Grants from \$2,700,000,000 to \$2,750,000,000 for fiscal years 1984-1987).

80. STATE CHILD CARE FACT BOOK, *supra* note 75, at 4.

81. 42 U.S.C.A. § 9831 (West Supp. 1989). Head Start not only helps parents meet their child care needs but also provides educational, medical, nutritional, and social services to children who, because of their families' economic position, are unable to provide all that is needed for healthy development. Ninety percent of the children served in the Head Start program are at or below the poverty line. The federal government pays 80 percent of the cost while the states pay the remaining 20 percent. The current authorization is under the Omnibus Human Services Authorization Act of 1986. Pub. L. No. 99-425, 101 Stat. 966 (1986). One author has examined the history of the Head Start Program from its origins to its evolution and the objectives of the program. See generally Miller, *Head Start: A Moving Target*, 5 YALE L. & POL'Y REV. 322, 328-41 (1987). Miller notes that in the program's twenty-two year history, "Head Start works, producing, among other benefits, quantifiable gains in social and educational achievement for the children who participate." *Id.* at 322. See also V. WASHINGTON & V. OYEMADE, *PROJECT HEAD START: PAST, PRESENT, AND FUTURE TRENDS IN THE CONTEXT OF FAMILY NEEDS* (1987) (a detailed examination into the administration of Head Start, current status, and programs effectiveness).

In fact, the success of Head Start was recently reported in the National Assessment of Edu-

cies, schools, and non-profit organizations.<sup>82</sup>

While Head Start was not originally designed as a child care program, it represents one of the largest federal programs for pre-school care.<sup>83</sup> Interestingly, Head Start's popularity can be seen by the fact that the program survived the social services budget cuts of the 1980's while other similar government programs, AFDC for example, had substantial reductions in spending.<sup>84</sup> Head Start is so widely regarded today that despite party differences on almost every other issue surrounding child care, each of the major child care proposals in the 101st Congress contained provisions to expand funding for Head Start.<sup>85</sup>

The Child Care Food Program (Food Program) reimburses participating child care centers, family groups, and day care homes for snacks and meals.<sup>86</sup> The United States Department of Agriculture distributes the funds to state agencies who then distribute to centers meeting stringent requirements.<sup>87</sup> One of the greatest attributes of the Food Program is that it has brought many child care providers previously not regulated under the regulatory arm of the state. A commentator noted that "the [child care food program] has been credited as a primary incentive to bring family day-care providers into the regulatory system."<sup>88</sup> Finally, the AFDC Child Care Disregard<sup>89</sup> permits an AFDC recipient to disregard work-related child care

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cation Progress which specifically noted that Head Start was responsible for improvements in minority testing scores. Wash. Post, Jan. 10, 1990, at A5, col. 1.

82. 42 U.S.C.A. § 1766 (West Supp. 1989).

83. Murray, *supra* note 1, at 296.

84. Miller, *supra* note 81, at 322. Examples of other social services programs which were cut in the 1980's: Medicaid, compensatory education, community services, and student loans. *Id.*

85. The Act for Better Child Care Services increases the appropriation for Head Start from \$1.40 billion to \$1.55 billion. S. 5, 101st Cong., 1st Sess. § 125, 135 CONG. REC. 7479 (1988). The Early Child Development Act of 1989 expands Head Start into a full-day, year round program and designates twenty-five percent of funding to be designated for child care. H.R. 3, 101st Cong., 1st Sess. tit. I, §§ 103, 105 (1989). President Bush in his 1990 Budget proposal allocated Head Start the largest single increase ever, an additional \$500 million, requesting \$1.89 billion. Wash. Post, Jan. 27, 1990, at A4, col. 1.

86. 42 U.S.C.A. § 1766(a) (West Supp. 1989) ("Secretary may carry out a program to assist States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in institutions providing child care.").

87. 7 C.F.R. § 226 *et seq.* (1989). For example, providers must account for the number of children served, the kind of food dispensed, and the dollars expended. Providers are subject to audits at any time. One commentator refers to the administration of the Child Care Food Program as a "complicated and time consuming undertaking because of the numerous and detailed requirements." Murray, *supra* note 1, at 298.

88. Murray, *supra* note 1, at 298.

89. 42 U.S.C.A. § 602(a)(8)(A)(iii) (West Supp. 1989) (recently amended in the Family Support Act of 1988. Pub. L. No. 100-485, tit. IV, § 402(a)(1)(B)(ii), (iii), 102 Stat. 2397

expenses up to a limit of \$175 a month per child age two or older and \$200 a month per child under the age of two.<sup>90</sup> The recipient must pay for the child care upon service and is then reimbursed through monthly AFDC checks.<sup>91</sup> The weakness in this program is the requirement that the AFDC recipient pay for the child care services up front. This expenditure is usually a large financial burden on the parent since the cost of child care greatly exceeds the AFDC allotment of \$175 a month or \$2,100 annually. Furthermore, the average AFDC recipient may not have the necessary extra cash to expend on child care each week.

The federal government's current involvement in child care is fragmented, the reasons for which can be attributed to several factors. First, American society has been slow in recognizing the large number of women entering the work force and the significant changes which have occurred within the traditional American family. As William Brock, former Secretary of Labor stated "[it] is incredible that we have seen the feminization of the work force with no more adaptation than we have had . . . it [child care] is a problem of sufficient magnitude that everybody is going to have to play a role: families, individuals, business and the government."<sup>92</sup> Second, the lack of federal oversight of child care efforts results in a piecemeal approach. Various federal agencies merely work on specific facets of child care relating to the agency's area of concentration.

What is lacking is a unified vision of improving child care in general. With no federal policy which is either monetarily or philosophically uniform, states have only slowly begun to create innovative programs to deal with their residents' child care needs.<sup>93</sup> However, the 100th Congress appears to have been a turning point for child care. Child care began to be referred to as high on both party's legislative agenda.<sup>94</sup> The proceeding congressional sessions included an unprecedented one hundred and seventy bills, offering a wide variety of approaches in an effort to help American families find solutions to their child care needs.

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(1988). Under the new law, states will provide child care services to welfare recipients during their participation in employment, education, and training. *Id.* at 402(g).

90. 42 U.S.C.A. § 602(a)(8)(A)(iii) (West Supp. 1989).

91. Roberts & Clarke, *supra* note 62, at 236.

92. JUGGLING JOBS AND BABIES, *supra* note 11, at 32.

93. The Children's Defense Fund's State Child Fact Book contains a detailed inquiry into the innovative approaches taken by states. For example, New Mexico increased the fee placed on all vital records to six dollars to generate \$700,000 to support child care services for low income working parents. Indiana approved a new funding source for school age child care by passing a five percent increase in the cigarette tax and earmarking a percentage of this increase to expand and develop new child care programs. STATE CHILD CARE FACT BOOK, *supra* note 75.

94. See *supra* note 2.

### III. THE CONGRESSIONAL AND EXECUTIVE CHILD CARE PROPOSALS

In the 100th Congress, Representatives and Senators began answering their constituent's pleas for improvement in the government's role in assisting families with child care. The bills which were introduced varied widely in their approaches to improving child care.<sup>95</sup> Of the seventy bills introduced in the 100th Congress, the debate primarily focused on the Act for Better Child Care Services<sup>96</sup> and the Child Care Services Improvement Act of 1987.<sup>97</sup> Even though the chief sponsors of The Act for Better Child Care Services and Child Care Services Improvement Act of 1987 compromised on their respective bills to prevent a splinter of support, The Act Better for Child Care Services never reached the floor of either the House or the Senate.<sup>98</sup>

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95. Generally, the bills can be divided into four areas: (1) improve the availability, quality, and affordability of child care; (2) modify indirect federal support provided through the tax system to parents who use or employers who provide child care; (3) require child care for certain low income mothers enabling them to work or obtain education or training; and (4) improve early childhood development services in child care settings. Stephan, Spar & Stewart, *Child Day Care: Summaries of Selected Major Bills In The 100th Congress*, Congressional Research Service, Library of Congress, Rep. No. 88-321, at 1 (1988).

96. H.R. 3660, 100th Cong., 1st Sess., 133 CONG. REC. 10,659 (daily ed. Nov. 19, 1987), introduced in the Senate as S. 1885, 100th Cong., 1st Sess., 133 CONG. REC. 16,554 (daily ed. Nov. 19, 1987). The Act for Better Child Care Service's chief sponsor was Senator Christopher Dodd (D-Conn).

The bill was first introduced with solid support in both chambers of Congress and endorsement by over 110 organizations. The endorsements included churches, unions, women's groups, educators, educational associations, and non-profit and for-profit groups. For a full listing, see H.R. REP. NO. 985, *supra* note 5, at 1.

97. S. 2084, 100th Cong., 2d Sess., 134 CONG. REC. 1422 (daily ed. Feb. 23, 1988), introduced in the House as H.R. 4002, 100th Cong., 2d Sess., 134 CONG. REC. 490 (daily ed. Feb. 24, 1988). The chief sponsor of the bill was Senator Orrin Hatch (R-Utah).

The central goal of the Child Care Services Improvement Act (CCSI) was to expand the availability of child care services. CCSI specifically targeted a major expense of child care centers, the cost of liability insurance. CCSI would have worked to decrease insurance costs for child care centers by changing liability laws. CCSI also sought to establish a Child Care Liability Risk Retention Group which would help to provide affordable insurance for child care centers. CCSI proposed to expand the availability of child care by giving benefits to employers who establish child care centers in addition to creating individual state councils to monitor child care and set standards. *Id.*

98. Notably, in an unlikely union, the principle sponsors, Senators Dodd and Hatch compromised on their respective bills to improve the possibility of child care legislation being passed in the 100th Congress. See Wash. Post, Oct. 8, 1988, at A1, col. 3. Nonetheless, the ABC bill never reached the floor of the House or Senate. Wash. Post, Oct. 8, 1988, at A18, col. 1.

Thus, despite the calls for a comprehensive approach to child care, the 100th Congress failed to enact any national strategy addressing the issue. Instead, Congress legislated on specific facets of child care. The legislation enacted includes the following: Omnibus Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-384 (1987) (amended the child and dependent care program to deny eligibility of overnight camp expenses on the basis that camp ex-

The debate over child care continued into the 101st Congress.<sup>99</sup> Three central approaches, offered by the Senate, the House of Representatives, and the President, have become the central focus of debate. Given the declarations as to the importance of passing child care legislation, and the extensive debate and refinements, it is highly likely that the child care program which becomes law will contain portions of the Senate, the House or the President's approach. An overview of each proposal is beneficial to expose the potential directions of child care policy in this country.

#### A. *The Senate: The Act for Better Child Care Services*

The Senate approach to child care, during the first session of the 101st Congress, culminated in the enactment of the Act for Better Child Care Services (ABC).<sup>100</sup> ABC is the most comprehensive proposal to improve child care through a basic framework to achieve a variety of goals. Its objectives are four-fold: (1) to make child care more affordable for low and moderate income families; (2) to increase the supply of child care; (3) to improve the quality of child care; and (4) to coordinate the resources and information on child care services.

To begin with, ABC establishes a matching grant program whereby states receiving federal dollars utilize seventy percent of the funding for direct grants to low-income families for child care services.<sup>101</sup> States distribute

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penses are not sufficiently related to taxpayers employment); Steward B. McKinney Homeless Assistance Act, Pub. L. No. 100-77, § 303(g), 101 Stat. 482 (1987) (provides supplemental assistance for homeless families including child care); Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 222(a), 101 Stat. 1815, 1826 (1987) (grants to non-profit organizations to provide child care services for low-income families in lower income housing projects); and Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988) (requires some AFDC recipients to participate in education or work training programs while the state provides child care). While each of these programs assists specific groups in need of child care, none provide comprehensive improvement to the child care system in general.

99. Wash. Post, Feb. 1, 1990, at A8, col. 1. President Bush's second state of the union discussed child care as an important challenge facing this nation: "[a] better America, . . . where women working outside the home can be confident their children are in a safe and loving care and where government works to expand child-care alternatives for parents." *Id.* Child care also received attention in the Democratic response, "[w]e will fight for child care so that working parents don't have to choose between their family's standard of living and their children's standard of care." *Id.* at A9, col. 3.

100. The Senate passed ABC on June 23, 1989. See S. 5, 101st Cong., 1st Sess., 135 CONG. REC. 7479 (1989). The appropriation outline allocates \$1.75 billion in the first year and sums as necessary in the following years. *Id.* at § 104(a). Other appropriations in the act provide for Standards Improvement Grant Program, a Child Care Liability Risk Retention Group, expansion of the Head Start Program, and amendments to the Internal Revenue Code (amends the Child and Dependent Care Tax Credit to make it refundable for low income families, and create a new credit for health insurance premiums for children).

101. *Id.* at § 107(c)(4) ("state will use at least 70 percent of the amount allotted to the state

funding for child care services through one of three ways. The state or designated local government may enter into contracts with providers, or families may receive child care certificates to purchase child care services from licensed providers of the families choosing.<sup>102</sup> Parents can also choose from a wide range of services including center-based care, group home, family-child care providers, and sectarian-based care.<sup>103</sup> Families are eligible for assistance with child care expenses based upon the family's income.<sup>104</sup>

With regard to the supply of child care, ABC seeks to increase availability by requiring states to implement a variety of expansion programs. These programs include incentives such as: (1) low interest loans to establish child care programs;<sup>105</sup> (2) grants to existing child care providers to assist in meeting state licensing standards;<sup>106</sup> (3) incentives to business to promote private investment in child care;<sup>107</sup> (4) funding to develop after school child care programs;<sup>108</sup> and (5) assisting any other activity which the state deems to be within the purposes of the ABC bill.<sup>109</sup> In addition, ABC designates twelve percent of the funding to programs which seek to increase the availability of child care.

One of the most important and controversial aspects of ABC is the method to improve the quality of child care. ABC attacks this goal by requiring states to set minimum quality standards.<sup>110</sup> To receive funding

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in any fiscal year to provide child care services that meet the requirements of this title use."'). Each state's allotment will be determined by the following criteria: (1) the number of children under five in the state; (2) total number of children in state eligible for free and reduced price lunches; and (3) per capita income of the state. *Id.* at § 105(b)(2)-(5).

102. *Id.* at § 108 (a)(1)(A)-(C).

103. *Id.* at § 103(7)(B). Families with incomes above one hundred percent of the state median income may be eligible for services on a sliding fee schedule. *See* § 107(c)(10) ("establishment of a sliding fee scale that requires cost sharing based on the services provided to and the income of the families.").

104. *Id.* at § 107(c)(7)(A).

105. *Id.* at § 107(c)(6)(A). The grants and low income loans are available to establish child care programs and to make renovations and improvements to existing facilities. *Id.* at § 107(A)(i), (A)(ii).

106. *Id.* at § 107(c)(6)(B). Priority is given to providers who serve children in very low income families. *Id.*

107. *Id.* at § 107(c)(6)(C). Section 114(a), entitled the Child Care Public-Private Partnership, works to encourage businesses to support child care services for children of employees and non-employees. The activities include: disseminating information relating child care into the business community, appointing a business task force, and establishing a President's award for Progressive Management Policy. *Id.* at §§ (a)(1),(c),(d).

108. *Id.* at § 107(c)(6)(D). In contrast, under the House proposal, an entire title is designed to expand school-based care. *See infra* notes 120-22 & accompanying text.

109. S. 5, 101st Cong., 1st Sess. § 107(c)(6)(K), 135 CONG. REC. 7479 (1989).

110. *Id.* at § 107(c)(12). Under the original ABC bill, H.R. 3660, 100th Cong., 1st Sess. (1987), the minimum standards were to be set on the federal level and the states were given five years to comply. *Id.* at § 15(b). But, under pressure from the National Governors Association,

under ABC, states must develop standards for group size, staff/student ratio, staff educational requirements, and health and safety standards within three years, and create an enforcement mechanism for the standards.<sup>111</sup> To facilitate the creation of these standards, a National Advisory Committee will develop model child care standards which the states may adopt or create their own.<sup>112</sup> ABC also specifically earmarks funding to assist states in developing and meeting the standards.<sup>113</sup>

Finally, ABC also contains provisions to promote the coordination of information on child care services between and within the states. On the federal level, ABC establishes an Administrator of Child Care in the Department of Health and Human Services to collect and disseminate all information received from the states.<sup>114</sup> On the state level, ABC calls for a lead child care agency, designated by each governor, as well as the creation of local advisory councils, to assess and counsel the states on their child care needs.<sup>115</sup>

### *B. House Proposal: The Early Child Development Act of 1989*

The most popular approach to addressing child care needs in the House of Representatives is the Early Child Development and Education Act of 1989 (CDEA).<sup>116</sup> CDEA concentrates on the expansion of existing child care programs and also increases the use of state and local education agencies in addressing child care. CDEA is divided into four titles: (1) expansion of Head Start programs; (2) establishment of early childhood education programs and before and after school programs; (3) services for infants and toddlers through community based organizations; and (4) coordination of child care and early childhood development activities. The following paragraphs will briefly describe these titles.

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the Act's chief sponsor Senator Dodd, conceded to the states the power to create individual standards or voluntarily adopt model federal standards. Wash. Post, June 20, 1989, at A23, col. 1.

111. S. 5, 101st Cong., 1st Sess. § 118, 135 CONG. REC. 7479 (1989). The National Advisory Committee is required to recommend standards based on the differing needs of center-based care, family child care, and group home care. Proponents of standards have argued that "we have standards for prisons, roads, and airports, we owe as much to our children." Wash. Post, Oct. 4, 1989, at A4, col. 4.

112. S. 5, 101st Cong., 1st Sess. § 107(c)(3)(B), 135 CONG. REC. 7479 (1989).

113. *Id.* at § 119.

114. *Id.* at § 115.

115. *Id.* at § 106(a),(d). The local advisory counsel will be composed of parents, providers, heads of Head Start in the community, and heads of local education agencies, among others. *Id.* at 106(d)(1)(A)-(F).

116. H.R. 3, 101st Cong., 1st Sess., introduced at 135 CONG. REC. 36 (daily ed. Jan. 3, 1989). H.R. 3 is currently pending on the House calendar.



Twenty-five percent of Title I of CDEA is designated for expansion of the successful and politically popular Head Start program. Head Start would be expanded from its current half-day to include child care services for a full day, year round.<sup>117</sup> Families would be eligible if they fall within specific income requirements.<sup>118</sup> In attempting to reach as many families as possible, families with annual incomes above the statutory income ceiling could be eligible on a sliding fee scale.<sup>119</sup>

Under the Early Childhood Development and School-Related Child Care title of CDEA, twenty-five percent of the funding would be directed toward establishing or expanding before and after school care for school age children and early development programs for three or four year olds.<sup>120</sup> Again, families would be eligible based on income, with families over the income ceiling paying on a sliding fee basis.<sup>121</sup> States would also be required to insure that programs receiving funding are in compliance with standards relating to health and safety, staff/child ratios, and staff training within three years of enactment.<sup>122</sup>

Title III of CDEA, Child Care Services for Infants, Toddlers, and Young Children, designates thirty-five percent of the funding to assist low and moderate income families with their child care costs. Support for child care expenses would be provided through a system similar to ABC. States would distribute funding through contracts with group home, family day care, and center-based providers.<sup>123</sup> A National Advisory Committee would develop model federal standards<sup>124</sup> and states would have three years to adopt the

117. *Id.* at tit. I, §§ 101-108. See Reisman, *The Economics of Child Care: Its Importance in Federal Legislation*, 26 HARV. J. ON LEGIS. 473, 498 (1989) (argues that the inadequacy of Head Start can be attributed to the fact that it is only a half day program).

118. H.R. 3, 101st Cong., 1st Sess. § 106(a)(3)(c) (1989).

119. *Id.* at § 107 ("fee scale shall be based on the services provided to, and the income of the families (adjusted for family size.)).

120. *Id.* at tit. VIII (Early Childhood Development and School-Related Child Care), §§ 8001-05.

121. *Id.* at § 8005.

122. *Id.* at § 8004(a)(2)(A).

123. *Id.* at tit. III (Child Care Services For Infants, Toddlers, and Young Children), § 658C(c)(4)(A). A controversy has arisen in the House as to how this provision should be financed. Wash. Post, Sept. 19, 1989, at A20, col. 3. In contrast to CDEA's direct grant program, Representative Downey (D-N.Y.) has argued for the title to be funded through an expansion of the existing Social Security entitlement program. Downey argues that "earmarking the funds as part of an existing entitlement program amounts to a guarantee there will be money available for child care each year." *Id.*

124. H.R. 3, 101st Cong., 1st Sess. § 658H (1989). With the stated goal of improving the quality of child care services, the Secretary of Health and Human Services will appoint a committee. The members of the committee will include early education specialists, parents, and providers. *Id.* at (a)(1).

federal model standards or develop their own.<sup>125</sup> CDEA also requires states to establish an enforcement mechanism to regulate these providers.<sup>126</sup> Finally, Title IV of CDEA provides fifteen percent of funds for the coordination of child care and early childhood development. The coordination program includes the expansion of resource and referral, a local needs assessment, and improvements in monitoring and enforcement of licensing requirements.<sup>127</sup>

### C. *The Executive Child Care Proposal*

President Bush formally presented his child care proposal in his budget address to Congress entitled "Building A Better America."<sup>128</sup> The aim of the Bush proposal is to enhance parental choice in child care. The President believes "we should help families without trying to run their lives. We should increase the options available for parents with children, but still let them choose how to care for their own children."<sup>129</sup> To accomplish this end, President Bush proposes four child care initiatives: (1) a refundable Child Tax Credit; (2) a provision making the current Child Care Dependent Care Tax Credit refundable; (3) a \$250 million expansion in Head Start; and (4) a study of liability insurance by the Department of Labor.<sup>130</sup>

The largest component of President Bush's plan is a new children's tax credit. President Bush seeks to create a new child tax credit of up to \$1,000 for each child under the age of four for low-income working families.<sup>131</sup> The credit would be refundable so that if the credit due exceeds a family's federal income tax liability, the family would receive the difference.<sup>132</sup> Families are

125. *Id.* at § 658F(a).

126. *Id.* at § 658C(c)(2)(C).

127. *Id.* at tit. IV, §§ 659C-P.

128. *Building a Better America*, *supra* note 12, at 101. Bush begins his child care proposal by stating "child care is one of the most important issues facing the Nation. Business, labor, nonprofit organizations, and State and local governments all can play important roles in helping families meet the challenges of a changing America. So, too, can the Federal Government." *Id.*

129. L.A. Times, July 31, 1988, at A21, col. 1.

130. *Building a Better America*, *supra* note 12, at 101.

131. H.R. 1466, 101st Cong., 1st Sess., 135 CONG. REC. 708 (daily ed. Mar. 16, 1989), introduced in the Senate as S. 601, 101st Cong., 1st Sess., 135 CONG. REC. 2571, 2721-23 (daily ed. Mar. 15, 1989). The tax credit is a credit of 14 percent of the earned income up to a maximum of \$1000 per child under the age of four for families with a maximum earned income of \$8,000 in 1990, \$9,000 earned income in 1991, \$10,000 in 1992 and \$11,000 in 1993. This translates into a tax credit of \$1,000 available to taxpayers with incomes between \$7100-\$8000 a year. See National Women's Law Center, Proposed Bush Tax Credit (Feb. 10, 1989) (available from the National Women's Law Center, 1616 P Street, N.W., Suite 100, Washington, D.C. 20036).

132. H.R. 1466, 101st Cong., 1st Sess. § 32A(g)(1) (1989).

provided with the option of receiving the credit in advance or through payment added to their income tax.

Secondly, under the President's proposal, the Dependent Care Tax Credit would be modified to permit families who do not earn sufficient income to pay federal income tax to nonetheless receive the credit.<sup>133</sup> The credit would be made refundable to enable its benefits to flow to low-income families. It is significant to note that families meeting the eligibility criteria for both the Dependent Care Tax Credit and the newly created Child Credit would be permitted to claim only one of the credits.

The third component of Bush's proposal involves expansion of the Head Start program.<sup>134</sup> The goal of the proposal is to increase the enrollment of poor, four year old children in the program. Bush, in his second budget proposal, provides an unprecedented \$500 million increase in Head Start with the aim of aiding an additional 180,000 children.<sup>135</sup> Finally, the President proposes a study of the barriers to liability insurance and urges that strategies be developed to facilitate their removal. Studies have indicated that lack of access to liability insurance may deter some employers from offering child care assistance.<sup>136</sup>

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133. *Id.* at § 3.

134. H.R. 1467, 101st Cong., 1st Sess., 135 CONG. REC. 709 (daily ed. Mar. 16, 1989), introduced in the Senate as S. 602, 101st Cong., 1st Sess., 135 CONG. REC. 2571 (daily ed. Mar. 15, 1989).

135. Wash. Post, Jan. 27, 1990, at A4, col. 1. Bush's request for an increase of \$500 million, is the largest increase in Head Start since the program began in 1965.

136. *Building a Better America*, *supra* note 12, at 105. A recent article on child care examines the reasons why many child care providers are unable to afford insurance. For example, the threat of allegations of sexual abuse of children is often cited by insurance companies as a justification of higher rates. The article argues both state and federal government must play a role to insure premium increases are warranted. Note, *The Insurance Crisis: Who's Looking After Day Care?* 9 HARV. WOMEN'S L.J. 199 (1988). See also *Litigation Abuse Reform Act of 1986: Hearings Before the Comm. on the Judiciary*, 99th Cong., 2d Sess. 39-58 (1985) (statement by Ms. Linda Lock, Advocacy Director, Committee to Coordinate Child Care. Ms. Locke testified regarding the adverse impact of the lack of available and affordable insurance has on child care); *Liability Insurance Availability: Hearings Before the Subcomm. on Commerce, Transportation & Tourism of Comm. on Energy & Commerce*, 99th Cong., 2d Sess. 761-79 (1985) (testimony of Deborah Phillips, Director of Child Care Information Service, National Association for Education of Young Children. Ms. Phillips testified of the unprecedented 150-200 telephone calls she receives per week from child care providers unable to find affordable insurance); *Costs and Availability of Liability Insurance: Hearings Before the Subcomm. on Oversight of Comm. on Ways and Means*, 99th Cong., 2d Sess. 450-75 (1985) (statement by Robert E. Barker, Depelchin Children's Center. Mr. Barker conveyed the experience of his child care center in Houston. He stated "my agency in Houston is ninety years old. In that ninety years, we have not had a single claim adjudicated against us. I have just received word that the insurance bill for the agency will jump from \$36,000 to \$75,000 a year - 110 percent increase in one year's time.").

#### IV. EVALUATION OF CURRENT PROPOSALS

The approaches taken by the Bush Administration and Congress differ significantly. Although each proposal attempts to address child care in general, it is evident that each proposal does not start from the same premise nor share in the same appropriate mechanism to achieve that premise. Therefore, in an effort to better understand each proposal's objectives, the following section will pose basic questions to expose the proposal's premise and any weaknesses to that approach.

##### *A. What is the government seeking to achieve and what role should the government play?*

##### *1. ABC*

The purpose provision of ABC states:

the purposes of this title are . . . to promote the availability and diversity of quality child care services to expand child care options. . . . for all families who need such services; . . . to provide assistance to families whose financial resources are not sufficient to . . . pay the full cost of necessary child care services; . . . to provide assistance to States to improve the quality of . . . child care services. . . .<sup>137</sup>

The goal of ABC is to create a national strategy to address a variety of problems plaguing the current child care system. Towards this goal, the bulk of the funding under ABC is designated to increase a family's ability to afford child care.<sup>138</sup> In addition, money is funneled into the community to expand the supply of child care, while the overall quality is improved through state minimum quality standards. Under ABC, the government is then ensured that all federal funding is spent on child care which meets some minimum level of quality. ABC operates on the notion that the most effective way to combat today's child care situation is by appropriating money that will go directly to the problem. It also seems to posit that the only way to achieve higher quality child care is by creating a national regulatory structure to be implemented by each state. Therefore, the government role under ABC is to merely create the mechanism from which states can develop quality standards and administer comprehensive state-created plans.

Opponents of ABC argue that the whole premise of ABC is flawed, given the already extensive and ineffective federal involvement in child care.<sup>139</sup>

137. S. 5, 101st Cong., 1st Sess. § 102(b), 135 CONG. REC. 7479 (1989).

138. *Id.* at § 107(c)(4)(A).

139. Rector, *Fourteen Myths About Families and Child Care*, 26 HARV. J. ON LEGIS. 517, 530 (1989).

These critics claim that since the federal government is already heavily involved in child care, there is no need to create a new bureaucracy.<sup>140</sup> As one commentator recently noted, "direct bureaucratic subsidization of a service is the least efficient way of meeting a public need . . . [and] direct subsidies virtually guarantee swollen administrative costs, salary escalation and general inefficiency."<sup>141</sup> Opponents suggest that a better approach would be to target all of the limited resources available directly to the most needy families and not waste money on administrative costs. Thus, given the budget constraints facing our nation, critics feel the government should concentrate on existing programs rather than venture into unproven and possibly inefficient programs.<sup>142</sup>

## 2. CDEA

The goal of the House of Representatives bill is similar to ABC in that CDEA seeks to expand the availability and diversity of child care. But, CDEA differs from ABC in that it utilizes a mix of the old and new; existing programs will be expanded in addition to new programs. Specifically, the emphasis of the bill is on including schools in the provision of child care. As stated in the Committee report, "[CDEA] embraces three systems— Head Start, child care and the schools; that it acknowledges that care and education are inextricably woven; and that it anoints no single delivery system is the bill's genius."<sup>143</sup> CDEA's approach stresses that legislation on child care is an opportunity to expand early childhood education rather than merely expanding positive supervision of children while their parents work. In seeking to improve child care under the auspices of early education, the logical institution to utilize is the school system whose "structure and administration is well developed."<sup>144</sup> With this reasoning, CDEA logically expands the existing and very successful early education program, Head Start.<sup>145</sup> The bill's purpose is further achieved by creating child care in educational settings for pre-school age children and school age children.<sup>146</sup> In attempting to reach its goal of expanding child care to low- income families,

140. S. REP. NO. 17, *supra* note 28, at 66 ("the ABC bill relies far too narrowly on new federal bureaucracy and doesn't give enough recognition and support to existing public and private programs.").

141. Rector, *supra* note 139, at 526.

142. S. REP. NO. 17, *supra* note 28, at 66 (ABC "doesn't give enough recognition and support to existing public and private programs in addressing child care problems.").

143. H.R. REP. NO. 190, *supra* note 9, at 35.

144. *Id.* at 33.

145. See H.R. 3, 101st Cong., 1st Sess. tit. I (expands Head Start from its current system of half day care into a full day program which will greatly assist the working poor).

146. *Id.* at tit. VIII.

CDEA also permits families to choose from a variety of child care settings under a system similar to ABC's direct grant provisions.<sup>147</sup>

States, rather than the federal government, will be responsible for implementing CDEA. The first two titles of CDEA, expanding Head Start and early childhood development, will be administrated through the public school system and state Head Start agencies.<sup>148</sup> An advantage to this approach is that the programs will be operated using existing administrative structures, which will save money and could potentially promote greater efficiency. Similarly, CDEA contains provisions for a direct grant program in which the federal government will merely organize the mechanism from which states are empowered to create a child care delivery system tailored to their unique needs.<sup>149</sup>

However, the extensive use of the school system in improving child care can be criticized on the grounds that public schools are already ridden with numerous other problems. It may be unrealistic and irresponsible to promote child care by putting more strain on the already over-burdened educational system. Critics have also noted the similarities between the Head Start expansion and early childhood development program, in that both stress early education for three to five years olds. Therefore, the early childhood provisions may be merely repetitive and "largely duplicate the purposes of the well-established Head Start Act."<sup>150</sup> Finally, CDEA can be criticized for creating new programs which may be inadequately funded. For example ABC devotes its full appropriation<sup>151</sup> to direct grants, quality standards and supply incentives. CDEA, on the other hand, with the same appropriation, seeks to not only implement a program similar to ABC, but also to: (1) expand Head Start; (2) create early childhood development for pre-schoolers; (3) provide before and after school care for school age children; and (4) coordinate child care information within communities. Thus, CDEA may lack the funding to enable the bill's programs to be adequately developed and therefore, successful.

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147. *Id.* at tit. III, § 658C(c)(4)(a).

148. Head Start is run through state agencies. 42 U.S.C. § 9836(a) (1986) ("Secretary is authorized to designate as Head Start agency any local public or private nonprofit agencies."). Under title VIII of CDEA, state educational agencies will administer the program. H.R. 3, 101st Cong., 1st Sess. tit. VIII, § 8007 (1989).

149. *Id.* at tit. III, § 658C.

150. H.R. REP. NO. 190, 101st Cong., 1st Sess. 67 (1989).

151. The appropriation for ABC is \$1.75 billion. *See supra* note 100.

### 3. Bush Proposal

In contrast, the Bush proposal focuses on parental choice. As President Bush notes:

[m]y philosophy with respect to child care is to put choice in the hands of parents, and not in the hands of the State. . . . I will build a policy around parental choice. Particularly we must find a way to put a greater range of choices in the hands of low-income parents.<sup>152</sup>

Toward this end, President Bush supports a system of tax credits that give parents, as consumers, total freedom of choice with no government intrusion. Having increased the consumers purchasing power, the basic theory of supply and demand will force the market to respond to meet American family's child care needs.<sup>153</sup> The Bush proposal attempts to limit the amount of government intrusion in the family's selection of a child care provider. Therefore, both federal and state involvement under this approach is minimal. There is no federal supervision of tax credits, nor requirements as to where the tax credit must be spent.

However, it can be argued that the whole premise of the Bush proposal, choice, is undermined by the fact that currently there is a lack of child care options from which to choose. For many families with a choice, the tax credit could be spent on child care by untrained providers in inadequate facilities with unsanitary conditions. Therefore, without any government oversight, there is no guarantee that the child care parents do choose will meet even basic quality standards. The Bush proposal also fails to address the problem of availability. The argument that principles of supply and demand will solve the shortage of child care is weakened by the fact that even families who can afford child care have difficulties locating quality care. This demonstrates that the child care market has been unable to respond to the demand.<sup>154</sup>

#### B. Which groups should federal resources target?

##### 1. ABC

One of the stated purposes of ABC is to "provide assistance to families

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152. *Building a Better America*, *supra* note 12, at 101.

153. Tauke, *Choice- The Essential Component Of Family Legislation*, 26 HARV. J. ON LEGIS. 465, 469-70 (1989).

154. S. REP. NO. 17, *supra* note 28, at 28-29. The report comments that "supply and demand becomes acute for infant care . . . [and] availability of school-age child care is also in short supply." *Id.* See also STAFF OF SELECT COMM. ON CHILDREN, YOUTH AND FAMILIES, 100TH CONG., 2D SESS., CHILDREN AND FAMILIES: KEY TRENDS IN THE 1980'S 3 (Comm. Print 1989) (provides specific information on the cost of child care, and waiting lists).

whose financial resources are not sufficient to enable the families to pay the full cost of child care."<sup>155</sup> Eligible children are defined as children in families with incomes not exceeding one hundred percent of the state median income for that family size.<sup>156</sup> Therefore, the government policy under ABC is not only to assist the lowest income families but to allow both low and middle income families to receive government funding. Thus, child care under ABC is not aimed exclusively at one income level.

Although seventy percent of ABC's funding is allocated for direct grants, the remaining thirty percent is designated for improving the quality and availability of child care in general which will assist all families, regardless of income level.<sup>157</sup> For example, any provider meeting the eligibility requirements may receive grants to expand facilities and improve the quality of care.<sup>158</sup> Also, ABC's resource and referral programs will expand all families knowledge and access to child care.

ABC has been criticized for assisting too few low-income families who are the most in need. Although ABC does contain a provision giving priority to low-income families,<sup>159</sup> this is no guarantee that low-income families will receive the bulk of assistance. Furthermore, studies have found that under ABC's income eligibility requirements, families earning \$34,716 (for a family of four) qualify for assistance.<sup>160</sup> Thus, under ABC's income guidelines, families whose income is almost three times the poverty line, can receive federal money to supplement their child care expenses.<sup>161</sup> As a result of the limited amount of funding available, it has been argued that "it is simply wrong to funnel scarce federal dollars to middle-class families who need them less."<sup>162</sup>

It is significant to note, that families in which one spouse stays at home to care for the child, are excluded from receiving any direct benefit under ABC. ABC limits direct benefits exclusively toward working families and their employment related child care expenses. This approach is justified on the grounds that working parents must pay for child care in addition to taxes on

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155. S. 5, 101st Cong., 1st Sess. § 102(b)(3), 135 CONG. REC. 7479 (1989).

156. *Id.* at § 103(7)(B).

157. *Id.* at § 107(c)(5)-(6).

158. *Id.*

159. *Id.* at § 107(c)(4)(A).

160. Besharov, *supra* note 67, at 514 ("ABC set eligibility by state median income, so that many states would have considerable higher caps: for example, \$39,530 in Illinois, \$41,656 in California, and \$44,941 in Massachusetts.").

161. The poverty level in 1989 was \$12,675 for a family of four. BUREAU OF THE CENSUS, U.S. DEP'T OF COMM., *Preliminary Estimate of Poverty Thresholds in 1989* (Jan. 18, 1990) (available from Bureau of Census, Washington, D.C. 20230).

162. Besharov, *supra* note 67, at 515.



their income. In contrast, "[i]f a parent cares for children at home, no tax is levied on the imputed value of the service."<sup>163</sup> Opponents charge that a significant weakness of ABC is that it fails to assist parents, who at a substantial financial sacrifice, stay home to care for their children.<sup>164</sup> In fact, they argue that "[i]t is not appropriate for the federal government to make a distinction between these two groups and put parents who have made the decision to stay at home and care for their own children at an economic disadvantage."<sup>165</sup>

## 2. CDEA

The majority of funding under CDEA is expressly directed to aiding low-income families. Head Start, by definition, focuses on the lowest income families.<sup>166</sup> Under the remaining titles, funding is allocated to a broader range of income levels. Families with incomes of up to 160 percent of the Department of Labor lower living standard (\$29,280 for a family of four in 1988) are eligible.<sup>167</sup> The bill also contains provisions which allocate funds for families with incomes near the poverty line. These families will be able to receive services on a sliding fee scale based on income.<sup>168</sup> Finally, the assistance under CDEA, like ABC, is exclusively for working parents. A family in which one parent stays at home will not receive any direct benefit.

Although CDEA is expressly directed toward more low-income families than ABC, CDEA's funding is not exclusively for those families with the lowest incomes. Therefore, if the position that only low-income families should receive direct federal assistance is adopted, it can be criticized for assisting too few low-income families who are most in need. Also, as under

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163. Lieberman, *Evaluating Child Care Legislation: Program Structures and Political Consequences*, 26 HARV. J. ON LEGIS. 357, 364 (1989).

164. See S. REP. NO. 17, *supra* note 28, at 69. The minority view states:

[f]ederal child care policy must not neglect the needs or overlook the contributions of working families who sacrifice the benefits of a second income to have a parent stay home to care for their young children. A federal child care policy must consider the needs of all parents with children, not just the needs of those who chose to work outside the home.

*Id.* See also Tauke, *supra* note 153.

165. S. REP. NO. 17, *supra* note 28, at 67. See also Tauke, *supra* note 153, at 468 ("government policies should not induce parents into the workforce and away from the care of their own children.").

166. See *supra* note 81 & accompanying text.

167. Under title VIII, Early Childhood Development and School-Related Child Care, families with incomes of up to 160 percent of the Department of Labor lower living standards (\$29,280 for a family of four in 1988) are eligible. H.R. 3, 101st Cong., 1st Sess. § 8003(b)(3)(C) (1989). Title III, Child Care Services for Infants, Toddlers, and Young Children, has the same eligibility requirements. *Id.* at § 658K(5)(B).

168. *Id.* at tit. VIII, § 8005; tit. III, § 685I.

ABC, CDEA is criticized for failing to provide direct assistance to families in which one parent remains at home to care for the children.<sup>169</sup>

### 3. *Bush Proposal*

The Bush approach to child care is directed primarily "to low-income families with young children."<sup>170</sup> For example, the Child and Dependent Care Tax Credit would be made refundable, which would greatly expand the use of the credit for low-income families since currently many low-income families who incur no tax liability are unable to utilize the credit.<sup>171</sup> Furthermore, President Bush's creation of a new child tax credit is exclusively for very low-incomes, with a ceiling on the credit for incomes over \$13,000.<sup>172</sup> The Bush proposal differs from ABC and CDEA in that families are eligible for tax credits regardless of the number of parents working. As a result, all families with children are able to receive some benefit from the government.

However, the tax credit is not without drawbacks. First, the credit sets a fixed amount of \$2,400 for one child and \$4,800 for two or more children.<sup>173</sup> Given that child care expenses average between \$3,000-\$5,000 a year,<sup>174</sup> the credit is below the average yearly cost. As a result, the credit fails to cover all of the child care expenses incurred. Furthermore, the tax credits are duplicative in that they are directed toward the same group, low-income families. But, a family is permitted to claim only one. As one commentator recently noted, "if the proposed child tax credit and the child and dependent care credit are intended to meet the same need, it seems unnecessary to have two credits for the same purpose."<sup>175</sup>

## C. *What are the funding mechanisms to achieve the goal?*

### 1. *ABC*

Under ABC, there are three funding methods for eligible families: (1) contracts or direct grants to providers, who comply with state quality standards, to provide child care services direct to eligible children;<sup>176</sup> (2) grants to local governments or non-profit private organizations selected by the state, who agree to enter into contracts with eligible child care providers supplying

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169. See *supra* notes 163-165 & accompanying text.

170. *Building a Better America*, *supra* note 12, at 103.

171. See *supra* notes 69-71 & accompanying text.

172. Forman, *supra* note 67, at 667.

173. I.R.C. § 21(c) (West Supp. 1989).

174. See *supra* note 35.

175. Forman, *supra* note 67, at 682.

176. S. 5, 101st Cong., 1st Sess. § 108(a)(1)(A), 135 CONG. REC. 7479 (1989).

child care services to eligible children;<sup>177</sup> and (3) child care certificates for families to purchase services directly from eligible providers.<sup>178</sup> Utilizing these methods, parents can choose from center-based, group home, and family child care providers which includes sectarian-based child care.<sup>179</sup>

The grant system has been criticized for forcing parents into "government selected child care providers."<sup>180</sup> State and local governments will initially select a group of eligible providers from which families will then choose their specific provider. The rationale is that it insures that federal dollars will be spent exclusively on child care centers which meet the quality standards adopted by the state. But, critics argue that the government will "make child care decisions for families and the range of child care arrangements available to families."<sup>181</sup>

The most controversial of the funding mechanisms is the provision for vouchers to be used in secular-based care. The controversy surrounding secular-based care providing child care services is prominent since secular-based care are one of the largest providers of child care in this country. Excluding secular-based care as eligible providers would omit an enormously popular provider. But, it is not within the scope of this Comment to provide a detailed analysis of the establishment clause issues raised by vouchers.<sup>182</sup> However, it is significant to note that vouchers for sectarian-based care are an extremely contentious issue and will, if enacted, undoubtedly face a constitutional challenge.<sup>183</sup>

## 2. CDEA

Under CDEA, the majority of funding utilizes existing mechanisms, Head

177. *Id.* at § 108(a)(1)(B).

178. *Id.* at § 108(a)(1)(C). The provision permitting church sponsored care provides "no financial assistance provided under this title shall be expended for any sectarian purpose or activity, including sectarian worship and instruction, except that this subsection shall not apply to funds received by any eligible provider resulting from the distribution of a child care certificate." *Id.* at § 121(a).

179. *Id.* at § 107(c)(7)(A) & § 121(a) (states that vouchers may be used in churches).

180. H.R. REP. NO. 985, *supra* note 5, at 31 (dissenting views on H.R. 3660).

181. *Id.*

182. For a analysis of the constitutionality of vouchers see Liekweg, *Participation of Religious Providers in Federal Child Care Legislation: Unrestricted Vouchers Are A Constitutional Alternative*, 26 HARV. J. ON LEGIS. 566 (1989); Whitehead, *Accommodation and Equal Treatment of Religion: Federal Funding of Religiously-Affiliated Child Care Facilities*, 26 HARV. J. ON LEGIS. 571, 587 (1989). But see Boothby, *The Establishment Clause and Free Exercise Clauses of the First Amendment and Their Impact on National Child Care Legislation*, 26 HARV. J. ON LEGIS. 549 (1989); Letter from Lawrence Tribe to Senator Edward Kennedy, 135 CONG. REC. S7443 (daily ed. June 23, 1989); Letter from Professor Gary J. Simon to Ms. Shirley Sagawa, 135 CONG. REC. S7444 (daily ed. June 23, 1989).

183. *Court Test Likely on Child Care*, Wash. Post, Oct 12, 1989, at A8, col. 1.

Start and local educational agencies, to provide early childhood development programs to eligible children.<sup>184</sup> One obvious benefit of this approach is that the mechanisms have been in existence for years and are assured of being effective. Under the Infant and Toddler Child Care program, states and local governments will distribute funds through grants to providers, and contracts with individual providers.<sup>185</sup> This program is similar to ABC, with one important distinction. In contrast to ABC, CDEA does not provide for certificates to be used at sectarian institutions. Instead, CDEA permits both public and private agencies to participate in providing child care services but bars funds from being used for "any sectarian purpose or activity, including sectarian worship and instruction."<sup>186</sup> This approach is modeled after the successful Head Start program, the constitutionality of which has yet to be challenged.<sup>187</sup>

The drawback of CDEA's mechanisms is that there is already serious concern with the lack of quality education in the public school systems. Entrusting the system with yet another responsibility could be overburdening an already strained system. Furthermore, the prohibition of sectarian child care could greatly restrict a families child care choices.

### 3. *Bush Proposal*

The Bush proposal uses the tax code to implement the bulk of the program through the Child and Dependent Care Tax Credit, and the new Child Tax Credit. By using the tax system, no new bureaucracy is created. Instead, the credits are merely added to the already existing tax credit provisions. This proposal provides the greatest flexibility to parents, since there are no government strings attached and all child care providers are eligible.

Expanding the child care system through tax credits, however, does have limitations. Primarily, there is no guarantee that the credit will in fact be spent on child care. In most low-income families, a tax credit is more cash to spend, and not necessarily on child care. Most poor families, who would be the recipients of the credit, have unsatisfied needs for food, clothing, shelter and transportation to which the family may allocate the credit. Secondly, the credit is a fixed amount which does not cover the full cost of child care services. Finally, a tax credit fails to address the important issues of quality, safety, and reliability at an affordable price.

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184. H.R. 3, 101st Cong., 1st Sess. tit. I & VIII.

185. *Id.* at tit. III, § 658D(a).

186. *Id.* at § 658J.

187. Ackerman, *Day Care and the Law of Church and State: Constitutional Mandates and Policy Options*, Congressional Research Service, Library of Congress, Rep. No. 89-170A, 5 (Mar. 1, 1989).

## V. CHILD CARE GOALS FOR THE 1990'S

Whichever approach is finally adopted, it will set the direction of child care policy into the next century.<sup>188</sup> Therefore, it is important that the policy chosen fulfill several basic requirements. First, an adequate child care policy must force states to implement quality standards. The current situation in which the states voluntarily establish standards and criteria for child care centers is totally inadequate.<sup>189</sup> Although states have varying needs and unique characteristics, basic standards of quality relating to space, safety, health and employee training are important enough that minimum standards should be created. By requiring quality standards, federal money will only subsidize quality care. Both ABC and CDEA call for quality standards, which are a necessary step toward the goal of improving child care in general. In contrast, Bush's tax credits fail to enhance the quality of child care.

Steps must also be taken to improve the availability of child care. Specifically, the federal government should facilitate the establishment of child care centers in both the public and private sector. For example, within the public sector, the government should become a model for providing government employees with access to child care.<sup>190</sup> Furthermore, funding should be made available for both existing and new providers to increase the number of child care services. Both the ABC and CDEA provide funding for this purpose. In contrast, the Bush approach provides no steps to increase the availability of child care.

Government funding for child care should strive to reach as many families as possible. Therefore, funding should not be exclusively restricted to the very lowest incomes since the health and safety of all children should be assured. Although low-income families have the most difficulty in affording child care, even families earning between twenty and thirty thousand dollars have difficulties affording child care. Low-income families will receive addi-

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188. At the publication of this Comment, only ABC had been passed by the Senate. CDEA was pending on the House calendar and President Bush's bills were pending in committee with no action scheduled.

189. *See supra* note 9.

190. For example, President Bush during the 1988 presidential campaign proposed to take steps to make the federal government a model child care provider. *See* L.A. Times, July, 31, 1988, at A21, col. 1. This would be a positive step for the child care system since it could encourage more employers to offer child care assistance. Both the federal and state governments could also provide seminars for lawyers, business persons, and the public interested in establishing child care centers. For information on ideas for such seminars, contact Child Care Advocacy Project, Washington Lawyers Committee for Civil Rights Under Law, 1400 Eye St., N.W., Suite 450, Washington, D.C. 20005. This organization has held three such successful seminars toward its goal of advocating for improved child care.

tional assistance under Title XX in addition to a refund under the Child and Dependent care tax credit.<sup>191</sup> Therefore, ABC's and CDEA's adoption of the state median income to define eligibility is a sound decision. Families above the state income levels should also derivatively receive benefits through the betterment of the system universally, through general improvements and increased awareness and information.

Thus, what is needed to address each of the requirements noted above is a comprehensive government policy. Amendments to existing programs will not suffice in solving basic issues of quality, affordability, and accessibility. Congress and the President are in the unique position of creating the framework to improve child care for all American families and should strive to provide a unified child care policy.

#### V. CONCLUSION

It is evident that only a comprehensive federal effort will insure uniformity as well as an effective child care system. Federal involvement in child care will achieve three necessary goals. First, children in America who are in child care will be in a safe and healthy environment. Second, quality child care will enhance women's access and equality in the work-place. Finally, it will enable American families to find some equilibrium between work and family, culminating in a more satisfying family life. As a commentator recently noted, "while everyone stands around agreeing that day care is a burning issue, something should be done to put out the flame."<sup>192</sup>

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191. Both ABC and President Bush's proposal contain amendments to the tax code making the credit refundable. ABC, S. 5, 101st Cong., 1st Sess. tit.II, § 3507A, 135 CONG. REC. 7479 (1989); President Bush's Amendments to the Tax Credit, H.R. 1466, 101st Cong., 1st Sess. § 3 (1989).

192. Baltimore Bus. J., Sept. 11, 1989, at 6, col. 1.

